

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL W. LOVELESS and DEPARTMENT OF THE NAVY,  
NATIONAL NAVAL MEDICAL CENTER, Bethesda, MD

*Docket No. 02-906; Submitted on the Record;  
Issued September 20, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant authorization to undergo a discography.

On May 17, 1999 appellant, then a 33-year-old firefighter, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on May 14, 1999, while performing cardiopulmonary resuscitation in a confined space, he sustained pain in his lower back.

Appellant had a magnetic resonance imaging (MRI) scan of his cervical spine on August 17, 1999, which indicated a "[s]mall herniated disc at the L5-S1 level with compression of the ventral aspect of the thecal sac and probable mild compression of the right nerve root at that level." He had several epidural steroid injections. By letter dated August 27, 1999, the Office accepted appellant's claim for lumbar strain, physical therapy and an MRI scan.

In a medical report dated December 17, 1999, Dr. Bruce L. Beck, an orthopedic surgeon, opined that appellant's herniated disc at the L5-S1 level with compression of the ventral aspect of the thecal sack and probably mild compression of the right nerve root at that level was caused by his work-related injury of May 14, 1999. Dr. Beck referred appellant to Dr. Paul H. Griffith, III, a Board-certified orthopedic surgeon. In a medical opinion dated December 22, 1999, Dr. Griffith examined appellant, reviewed his MRI scan and concluded:

"There is no evidence of neurologic compression by MRI scan. This is consistent with [appellant's] absence of radicular pain and I am sending him [to] Dr. Thompson for a discogram to single out the L5-S1 disc as a significant pain generator. In the meantime, he is to continue with strictly light duty and will return to this office with the results of the discography when it has been made available to us in several weeks."

In a letter to the Office medical adviser dated February 2, 2000, the Office inquired if there was medical evidence sufficient to establish that discography was necessary due to the work injury. The Office medical adviser responded, “[n]o. Discography is controversial. Would not be of benefit in this case. [The] MRI scan is equivocal. Recommend myelogram and CT [computed tomography] scan be done.” By letter dated February 8, 2000, the Office advised appellant of this opinion and noted that if his physician did not agree, he should present his objections. By letter dated February 17, 2000, Dr. Griffith responded:

“The CT-Myelogram is unnecessary. He has no evidence of neural involvement either clinically or by MRI [scan]. We need to identify the pain generator with discography as he does have an annular tear at L5-S1. We are requesting that authorization be granted for [appellant] to have a discogram of L5-S1 to rule out the pain generator.”

Due to the conflict between the opinion of Dr. Griffith and the Office medical adviser, the Office referred appellant to Dr. Roger Raiford a Board-certified orthopedic surgeon, for an impartial medical examination. In a medical report dated April 27, 2000, Dr. Raiford stated:

“Discography has been used for many years as a diagnostic study as a provocative test to determine whether or not a particular level is the cause of [appellant’s] back discomfort and also to determine the level at which a spinal fusion is likely to be successful. More recently, the MRI [scan] has become available and also a CT scan following a myelography has been available and has been more widely accepted. The use of discography or a CT discogram does not offer any significant advantage over the more widely accepted methods such as a myelogram and a post myelogram CT scan to be used in questionable cases. For this reason, it would be my opinion that given a choice, the myelogram and post myelogram CT scan should be chosen over a discogram and therefore, it would be my opinion that a discogram would not be necessary or warranted in this case.”

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“In my opinion, the myelogram and post myelogram CT scan is indicated. It does appear from examination and from reviewing the MRI [scan] that a laminectomy at the right L5-S1 level may eventually be indicated but in my opinion, there is no evidence that a fusion will be necessary in this case and this further adds to my opinion that a discogram is not warranted in this case and in fact, the myelogram and post CT myelogram may give the same information.”

By decision dated May 12, 2000, the Office denied authorization of a discography.

By decision dated October 5, 2000, the Office denied appellant’s August 9, 2000 request for an oral hearing as untimely. By letter dated November 15, 2000, appellant requested reconsideration of the May 12, 2000 decision. In support of his request, appellant submitted a medical report dated May 19, 2000, wherein Dr. Brian Sullivan, a neurosurgeon, stated:

“As I explained to [appellant] a simple laminectomy and discectomy is good to relieve [his] leg pain by decompressing the nerve[,] however[,] it rarely

significantly improves back pain. Therefore, the fact that [appellant's] main difficulty right now is his back pain leads me to believe that a simple surgical intervention would not be helpful for [appellant]. I believe that [he] needs further evaluation to define the pain generator for his low back pain and this can be done with a diskogram at the L5-S1 and L4-5 levels. The diskogram is the first step in clinically correlating what we see on the MRI scan with [appellant's] clinical symptomatology. If in fact the diskogram does correlate with the abnormal MRI [scan] findings the next step in my opinion would be consideration of an IDET procedure. This minimally invasive procedure which is done at the Anne Arundel Medical Center has met with a very high rate of success although it is a new technology. It is obviously much less invasive than a major decompression and fusion, which would be required, if the IDET procedure were not available. As I explained to [appellant] if this were my back with these findings I would want the diskogram and IDET procedure as the least invasive way to relieve my ongoing pain."

Appellant submitted medical reports from Dr. Griffith, who noted that he continued to recommend discographic studies to confirm the level of pain generator of the lumbar spine.

In a decision dated November 30, 2001, the Office denied modification of its May 12, 2000 decision.

The Board finds that the Office properly denied appellant's request for authorization to undergo a discography.

Section 8103 of the Federal Employees' Compensation Act<sup>1</sup> provides that the Office shall provide a claimant with the services, appliances and supplies prescribed or recommended by a qualified physician which are likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation. In interpreting section 8103, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office, therefore, has broad administrative discretion in choosing means to achieve this goal.<sup>2</sup> The only limitation on the Office's authority is that of reasonableness.<sup>3</sup>

In the instant case, the Office determined that there was a conflict in the medical opinions between Dr. Griffith, appellant's Board-certified orthopedic surgeon, and an Office medical adviser. Dr. Griffith recommended that appellant undergo a discogram to single out the L5-S1 disc as a significant pain generator. In contrast, the Office medical adviser opined that a discography was controversial and would not be of benefit in this case.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>3</sup> *Id.*

To resolve the conflict, the Office referred appellant, pursuant to section 8123(a) of the Act, to Dr. Raiford, a Board-certified orthopedic surgeon, for an impartial medical examination. Dr. Raiford determined that a myelogram and post myelogram CT scan should be chosen over a discogram. Dr. Raiford explained that the use of discography would not offer any significant advantage over the more widely accepted myelogram and CT tests to determine whether or not a particular level is the cause of back discomfort and also to determine of what level a spinal fusion would be successful. In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>4</sup> As Dr. Raiford provided a clear explanation as to why the discography was not necessary and subsequent opinions by Drs. Griffith and Sullivan did not show why their opinions should be given more weight than that of Dr. Raiford, the weight of the medical evidence rests with the well-rationalized opinion of Dr. Raiford. The Office acted within its discretion in denying authorization for the discography.

The decision of the Office of Workers' Compensation Programs dated November 30, 2001 is hereby affirmed.

Dated, Washington, DC  
September 20, 2002

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).